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APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUE000343

For approval of generation facilities pursuant to Virginia Code § 56-580 D or, in the alternative, for approval of expenditures pursuant to Virginia Code § 56-234.3 and for a certificate of public convenience and necessity pursuant to Virginia Code § 56-265.2

and

APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUF000021

For authority under Chapters 3, 4, and 5 of Title 56 of the Code of Virginia to participate in lease financing arrangements for construction of generation facilities, and for a declaration of non-jurisdiction

HEARING EXAMINER'S PROTECTIVE RULING

August 24, 2000

On June 16, 2000, Virginia Electric and Power Company ("Virginia Power" or "the Company") filed an application with the Commission in which, among other things, it proposes to construct a new generating plant at the Possum Point Power Station ("Possum Point Project"). The Possum Point Project is proposed to be operational in May 2003. The project is expected to cost an estimated \$280 to \$300 million. The Company requests approval under § 56-580 D of the Code of Virginia, a determination that § 56-234.3 does not require approval of the agreements necessary for the proposed synthetic lease financing, or in the alternative that the Commission grant an exemption from § 56-234.3. The application also seeks a certificate of public convenience and necessity pursuant to Virginia Code § 56-265.2 should the Commission determine that section is applicable. That same day the Company filed a Motion for Determination of, or in the Alternative, for Exemption or Waiver from, Bidding Rules. That application was docketed as Case No. PUE000343.

On July 5, 2000, Virginia Power filed another application related to the project seeking authority from the Commission to participate in lease financing arrangements of approximately \$300 million for construction, for a declaration that the Commission will not assert jurisdiction over the financing parties to the transaction, and for an exemption from, approval under, or determination that approval under § 56-234.3 is not required for the Company to enter into certain agreements in connection with the financing. That application was docketed as Case. No. PUF000021.

On July 26, 2000, the Commission issued an Order Inviting Comments and Responses and Prescribing Notice in which, among other things, it docketed the proceedings, identified preliminary issues presented in these cases, appointed a hearing examiner to make recommendations on those preliminary issues, and established public notice requirements.

On August 10, 2000, Virginia Power, by counsel, filed a motion requesting the entry of a Protective Order setting forth the procedures by which confidential proprietary information shall be handled generally in this proceeding. Virginia Power also asserts that certain information designated as "competitively sensitive" requires an additional level of protection as a result of electric utility industry restructuring and the emergence of competitive markets for the sale and purchase of electricity. It proposes to individually enter into nondisclosure agreements with parties to this proceeding who may request access to such competitively sensitive information. Those agreements will, to the extent reasonable, permit such parties to have access to the information under more restrictive protective provisions.¹

Staff and the parties hereto were given an opportunity to comment on the Motion. No comments or objections were received. Therefore, upon consideration of the Company's request, I am of the opinion and find that protected treatment is warranted for confidential information in this case. Accordingly,

IT IS DIRECTED THAT any documents, materials, and information to be produced by any party ("Party") in this proceeding, either for itself or for its affiliates, in response to Commission orders, rulings, Commission Staff ("Staff") data requests or properly propounded interrogatories or requests for production of documents from Parties in this proceeding, which documents, materials, or information the producing party designates as confidential ("Confidential Information"), shall be produced, examined and used only in accordance with the following conditions:

(1) All Confidential Information produced to Staff, or Parties shall be used solely for the purposes of this proceeding (including appeals).

(2) Access to Confidential Information shall be specifically limited to Staff or Parties, their counsel and expert witnesses, and to support personnel who are working on this case under the direction of their counsel or expert witnesses and to whom it is necessary that the

¹ Motion at 2.

Confidential Information be shown for the purposes of this proceeding, so long as each such person has executed an Agreement to Adhere to Protective Ruling ("Agreement") which is Attachment A to this Protective Ruling. Staff, Staff counsel and

Staff's expert witnesses are not required to sign the Agreement, but are subject to the provisions hereof. All Agreements must be properly forwarded to the producing party upon execution, and the producing party shall provide a list of those persons entitled to access Confidential Information to the Clerk of the Commission and all counsel of record.

(3) In the event that Staff or Parties seek permission to grant access to any Confidential Information to any person other than the persons authorized under Paragraph (2) above, the party desiring permission shall seek a stipulation from counsel for the producing party. The producing party shall be under no obligation to furnish Confidential Information to persons other than those described in Paragraph (2) above absent such stipulation unless specifically ordered by the Commission or Examiner to do so. Parties are encouraged, however, to seek stipulations to the maximum extent practicable. In the event of a negative response, the party seeking disclosure permission may apply to the Commission or Examiner for such permission.

(4) Any Party that contends it (a) should not be required to produce specific documents, materials or information due to their commercially or competitively sensitive nature ("Competitively Sensitive Information") or (b) should restrict access to Competitively Sensitive Information, shall bear the burden of proving that such specific documents, materials, or information should not be discoverable or access should be restricted. For purposes of responding to interrogatories or data requests propounded by Parties in this proceeding, the production and handling of Competitively Sensitive Information shall be governed by the terms of an appropriate nondisclosure agreement between the producing party and the other party. While the Staff is bound by the terms of this Ruling, it is not required to execute a nondisclosure agreement in order to gain access to Competitively Sensitive Information.

(5) Competitively Sensitive Information need not be made available to entities that sell electricity (capacity or energy) on the open market in retail or wholesale transactions ("Electricity Marketers"). If a Party has divisions or affiliated companies that are Electricity Marketers, Competitively Sensitive Information will not be shown to, shared with, or disseminated in any manner to such divisions or affiliated companies that are Electricity Marketers. Except for its use in Case Nos. PUE000343 and PUF000021 and without limiting the generality of the foregoing, such information and knowledge shall not be used by the recipient, in any manner, to gain an advantage over the producing party or for any other purpose in litigation, negotiation, competition or consultation.

(6) If a portion of the Competitively Sensitive Information contains projections, forward-looking statements and other material non-public information normally distributed only to senior officers and directors of the producing party or its parent corporation, such information should be clearly marked as "Inside Information." The receiving party and its authorized representatives who have access to Competitively Sensitive Information as set forth above and who require access to Inside Information that may be included in such Competitively Sensitive Information shall not trade in any securities of the producing party or its corporate parent while in the possession of or knowledgeable of such information, unless and until

otherwise advised by the producing party that such trading is permitted. This provision shall not be deemed to prohibit purchases, sales, or ownership of shares in mutual funds that may hold or trade in securities of the producing party.

(7) The Party producing Competitively Sensitive Information should clearly label such information and list it as an attachment to the nondisclosure agreement updated as additional information is provided. A similar list of such information provided to Staff shall be provided to Staff counsel.

(8) A Party withholding Competitively Sensitive Information from any participant² shall immediately provide the requesting party with a log enumerating all such information. The log shall specify the following about the information withheld: (i) the original requesting party; (ii) the data request number and date of the request; (iii) the type of information (*e.g.*, computer-stored information, microfilm, letter, memorandum, policy circular, minute book, telegram, chart, etc.) or some other means of identifying it; (iv) its present location and custodian; (v) the nature of the information; and (vi) the basis for the claim that the information is competitively sensitive. The withholding party shall telefax updates to the log, if any, to participants on the first occasion Competitively Sensitive Information is withheld from any participant, and thereafter on a weekly basis, for the duration of this proceeding. The obligations imposed by this paragraph shall be in addition to the withholding party's obligation to make specific objections to a data request that seeks Competitively Sensitive Information.

(9) The Clerk of the Commission is directed to maintain under seal all documents, materials, and information filed with the Commission in this proceeding which the producing party has designated, in whole or in part, as Confidential Information or Competitively Sensitive Information.

(10) In the event Staff or Parties seek to introduce testimony, exhibits, or studies that disclose Confidential Information or Competitively Sensitive Information, the Staff or the party seeking such introduction shall:

- (a) Notify the producing party at least three (3) days in advance of any hearing regarding testimony that is not prefiled unless a shorter period would not unduly prejudice the producing party.
- (b) If such testimony is prefiled, file such testimony, exhibits, or studies under seal and also file copies deleting those parts that contain references to or portions of the designated Confidential Information or Competitively Sensitive Information. The testimony, exhibits, or studies containing the Confidential Information or Competitively Sensitive Information filed with the Commission shall be kept under seal unless or until the Commission or Examiner rules to the contrary. Each party shall, upon signing Attachment A hereof or an appropriate

²For purposes of this Ruling, the term "participant" means all parties and Staff.

nondisclosure agreement, receive a copy of those parts

of the testimony, exhibits, or studies that contain references to or portions of the designated Confidential Information or Competitively Sensitive Information and each party and counsel shall be bound by this Ruling insofar as it restricts the use of and granting of access to the Confidential Information or Competitively Sensitive Information. That portion of the transcript recording such testimony shall be placed in the record under seal.

(11) Oral testimony regarding Confidential Information or Competitively Sensitive Information, if ruled admissible, will be taken in camera and that portion of the transcript recording such testimony shall be placed in the record under seal.

(12) No person authorized under this Protective Ruling to have access to Confidential Information or Competitively Sensitive Information shall disseminate, communicate, or reveal any such Confidential Information or Competitively Sensitive Information to any person not specifically authorized under this Protective Ruling to have access to such confidential information.

(13) At the conclusion of this proceeding (including any appeals), any originals or reproductions of any Confidential Information or Competitively Sensitive Information produced pursuant to this Ruling shall be returned by the Party to the producing party (or destroyed) if requested to do so by the producing party. At such time, any originals or reproductions of any Confidential Information or Competitively Sensitive Information in Staff's possession will be returned to the producing party, destroyed or kept with Staff's permanent work papers in a manner that will preserve the confidentiality of the Confidential Information or Competitively Sensitive Information. Insofar as the provisions of this Protective Ruling restrict the communications and use of the Confidential Information or Competitively Sensitive Information produced thereunder, such restrictions shall continue to be binding after the conclusion of this proceeding (including any appeals) as to the Confidential Information or Competitively Sensitive Information.

(14) This Ruling does not preclude Staff or Parties from arguing, prior to public disclosure, that documents, materials, and information received under the Ruling should not be treated as confidential. But in no event shall any party disclose Confidential Information or Competitively Sensitive Information it has received subject to this Ruling absent a finding by the Commission or Examiner that such information does not require confidential treatment. If Staff or any party desires to make such an assertion, the producing party shall be given reasonable notice before being required to bear the burden of proving the contrary, and reasonable notice shall be at least three (3) days in advance of a hearing in connection with testimony that is not prefiled and that contains Confidential Information or Competitively Sensitive Information. The burden of proof to show that documents, materials, or information require confidential treatment as trade secrets, commercially, competitively, or personally sensitive information, or other grounds for confidential treatment shall be upon the proponent of maintaining the documents, materials, or information in confidence.

(15) A producing party is obligated to separate non-confidential documents, materials, and information from Confidential Information and Competitively Sensitive Information wherever practicable, and to produce the non-confidential documents, materials, and information forthwith.

Deborah V. Ellenberg
Chief Hearing Examiner

**COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION**

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AGREEMENT TO ADHERE TO PROTECTIVE RULING

I, _____, on behalf of and representing _____, hereby acknowledge having read and understood the terms of the Protective Ruling entered in this proceeding by the Hearing Examiner on _____, 2000, and agree to treat all Confidential Information that I receive in connection with Case Nos. PUE000343 and PUF000021 as set forth in that Ruling.

Signature: _____

Printed Name: _____

On behalf of: _____